



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1214

[Document Number AMS-SC-15-0072]

Christmas Tree Promotion, Research, and Information Order; Late Payment and Interest Charges on Past Due Assessments

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on prescribing late payment and interest charges on past due assessments under the Christmas Tree Promotion, Research, and Information Order (Order). The Order is administered by the Christmas Tree Promotion Board (Board) with oversight by the U.S. Department of Agriculture (USDA). Under the Order, assessments are collected from domestic producers and importers and used for research and promotion projects designed to maintain and expand the market for fresh cut Christmas trees. This proposal would implement authority contained in the Order that allows the Board to collect late payment and interest charges on past due assessments. If this rule is finalized, it is proposed that late payment and interest charges would begin to accrue on unpaid assessments beginning 30 days after the effective date of the final rule. One additional change would provide authority in the Order for the Board to change the crop year and fiscal period through

administrative action. This action would contribute to effective administration of the program.

DATES: Comments must be received by **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments may be submitted on the Internet at: <http://www.regulations.gov> or to the Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue, SW., Room 1406-S, Stop 0244, Washington, DC 20250-0244; facsimile: (202) 205-2800. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection, including name and address, if provided, in the above office during regular business hours or it can be viewed at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue, SW., Room 1406-S, Stop 0244, Washington, DC 20250-0244; telephone: (202) 720-9915; facsimile (202) 205-2800; or electronic mail: Patricia.Petrella@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Order (7 CFR part 1214). The Order is authorized under the

Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411-7425).

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This action has been designated as a "non-significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

This rulemaking has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This proposed rule invites comments on prescribing late payment and interest charges on past due assessments under the Order. The Order is administered by the Board with oversight by USDA. Under the Order, assessments are collected from domestic producers and importers and used for research and promotion projects designed to maintain and expand markets for fresh cut Christmas trees. This proposed rule would implement authority contained in the Order and the 1996 Act that allows the Board to collect late payment and interest charges on past due assessments. This action was unanimously recommended by the Board and would contribute to effective administration of the program.

Section 1214.52(a) of the Order specifies that the funds to cover the Board's expenses shall be paid from assessments on producers and importers, donations from persons not subject to assessments, and from other funds available to the Board. Paragraphs (b) and (c) specify that the collection of assessments on Christmas trees that are cut and sold or imported will be the responsibility of the producer who produces the Christmas trees or causes them to be cut, or the importer who imports Christmas trees for marketing in the United States.

Section 1214.52 (e) specifies that "a late payment charge, may be imposed on any producer or importer who fails to remit to the Board, the total amount for which any such producer or

importer is liable on or before the due date established by the Board. In addition to the late payment charge, an interest charge may be imposed on the outstanding amount for which the producer or importer is liable. The rate for late payment and interest charges shall be specified by the Secretary through rulemaking."

The Order was implemented in November 2011, but immediately stayed. The stay was lifted on April 7, 2014, and the program is currently in effect. Domestic assessments are due on February 15, 2016. This will be the first assessment collection by the Board. Importers will be responsible for paying the assessment directly to the Board 30 calendar days after importation. U.S. Customs and Border Protection will not be collecting on importers this season. Producers who domestically produce less than 500 Christmas trees annually or import less than 500 Christmas trees annually are exempt from assessment.

If this rulemaking is finalized, it is proposed that late payment and interest charges would begin to accrue on unpaid assessments beginning 30 days after the effective date of the final rule. Therefore, beginning 30 days after the effective date of the final rule a late payment charge of \$250 would be applied to any unpaid assessments for producers and importers that are delinquent in paying their assessment. If the assessment is paid after February 15, but up to 29 days after the effective

date of the final rule, no late payment charge would be assessed.

The late payment charge would be increased to \$500 after 90 days after the effective date of the final rule. Additionally, a 1.5 percent interest charge per month would be assessed on unpaid assessments and fees owed, beginning 30 days after the effective date of the final rule. The delay of the imposition of late payment and interest charges would only apply to the initial period of assessment collection. Assessment funds are used by the Board for activities designed to benefit all industry members. Thus, it is important that all assessed entities pay their assessments in a timely manner. Entities who fail to pay their assessments on time would be able to reap the benefits of Board programs at the expense of others. In addition, they would be able to utilize funds for their own use that should otherwise be paid to the Board to finance Board programs.

Board Recommendation

The Board met on July 17, 2015, and unanimously recommended specifying rates of late payment charges and interest on past due assessments in the Order's regulations. Specifically, the Board recommended that a late payment charge of \$250 be applied to late assessments for producers and importers that are delinquent in paying their assessment 30 days after the due date. The late payment charge would be increased to \$500 after 90 days of delinquency. Additionally, a 1.5 percent interest charge per

month would be assessed on late assessments and fees owed, beginning 30 days after the assessment due date. This fee structure is not overly burdensome on small producers or importers, but does create the incentive to promote timely payment of assessments due. This action would contribute to the efficient administration of the program.

This action would help facilitate program administration by providing an incentive for entities to remit assessments in a timely manner, with the intent of creating a fair and equitable process among all assessed entities. Accordingly, a new Subpart C would be added to the Order for rules and regulations, and a new section 1214.520 would be added to Subpart C.

This proposed rule would also make one additional change to the Order. This rule would revise the definition of crop year and fiscal period as defined in sections 1214.5 and 1214.8, respectively. The Board recommended this change because USDA revised the crop year and fiscal period during the promulgation process from what was originally proposed by the industry. The Board wants the flexibility to change these dates if necessary. The crop year and fiscal period would be revised by adding language to allow the Board to change the crop year or fiscal period administratively through Board action.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the impact of the rule on small entities. Accordingly, AMS has considered the economic impact of this action.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (producers and importers) as those having annual receipts of no more than \$7.5 million.

According to the 2012 Census of Agriculture published by the National Agricultural Statistics Service (NASS), it is estimated that there are 15,494 farms that sold cut Christmas trees in the United States. According to NASS, the value of cut Christmas trees sold in 2012 was \$808,644,000. Dividing that value by the number of farms yields an average annual producer revenue of \$52,191. Therefore it is estimated that all farms that sold Christmas trees had revenue under \$7.5 million.

Likewise, based on Customs data, it is estimated there are 153 importers of Christmas trees. Using 2014 Customs data, all importers import less than \$7.5 million worth of Christmas trees

annually. Thus, all domestic producers and imports of Christmas trees would be considered small entities.

Regarding the value of the commodity, as mentioned above, based on 2012 NASS Census of Agriculture data, the value of the domestic cut Christmas trees was about \$808.6 million. According to Customs data, the value of 2014 imports was about \$25.8 million.

This rulemaking invites comments on prescribing late payment and interest charges on past due assessments under the Order. The Order is administered by the Board with oversight by USDA. Under the Order, assessments are collected from producers and importers of Christmas trees that are cut and sold or imported.

This proposed rule would add a new section 1214.520 that would specify a late payment charge of \$250 to be applied to late assessments for producers and importers that are delinquent in paying their assessment 30 days after the due date. The late payment charge would be increased to \$500 after 90 days of delinquency. Additionally, a 1.5 percent interest charge per month would be assessed on late assessments and fees owed, beginning 30 days after the assessment due date. This section would be included in a new Subpart C - **Provisions Implementing the Christmas Tree Promotion, Research, and Information Order.** This action was unanimously recommended by the Board and is

authorized under section 1214.52(e) of the Order and section 517(e) of the 1996 Act.

This proposed rule would also make one additional change to the Order. This rule would revise the definition of crop year and fiscal period as defined in sections 1214.5 and 1214.8, respectively. The Board recommended this change because USDA revised the crop year and fiscal period during the promulgation process from what was originally proposed by the industry. The Board wants the flexibility to change these dates if necessary. The crop year and fiscal period would be revised by adding language to allow the Board to change the crop year or fiscal period administratively through Board action.

Regarding the economic impact of this proposed rule on affected entities, this action would impose no costs on producers and importers who pay their assessments on time. It would merely provide an incentive for entities to remit their assessments in a timely manner. For all entities who are delinquent in paying assessments, both large and small, the charges will be applied uniformly. As for the impact on the industry as a whole, this action would help facilitate program administration by providing an incentive for entities to remit their assessments in a timely manner, with the intent of creating a fair and equitable process among all assessed entities.

Additionally, as previously mentioned, the Order provides for an exemption for entities that produce or import less than 500 Christmas trees. Regarding alternatives, one option to the proposed action would be to maintain the status quo and not prescribe late payment and interest charges for past due assessments. However, the Board determined that implementing such charges would help facilitate program administration by encouraging entities to pay their assessments in a timely manner. The Board reviewed rates of late payment and interest charges prescribed in other research and promotion programs and concluded that the late payment charge and the interest charge contained in this proposal would be appropriate.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved under OMB control number 0581-0093. This rulemaking would not result in a change to the information collection and recordkeeping requirements previously approved and will impose no additional reporting and recordkeeping burden on domestic producers and importers of Christmas trees.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally,

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Regarding outreach efforts, the Board met on July 17, 2015, and unanimously recommended these proposed changes to the Order.

All of the Board's meetings, including meetings held via teleconference, are open to the public and interested persons are invited to participate and express their views.

We have performed this initial RFA regarding the impact of this action on small entities and we invite comments concerning potential effects of this action on small businesses.

While this proposed rule set forth below has not received the approval of USDA, it has been determined that it is consistent with and would effectuate the purposes of the 1996 Act.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because the first collection of assessments under the Order, on the 2015 harvest, is underway and assessments were due on February 15, 2016. The Board would like to implement this

incentive as soon as possible to facilitate the initial collection of assessments. All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1214

Administrative practice and procedure, Advertising, Consumer information, Christmas trees, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1214 is proposed to be amended as follows:

PART 1214- CHRISTMAS TREE PROMOTION, RESEARCH, AND INFORMATION ORDER

1. The authority citation for 7 CFR part 1214 continues to read as follows:

Authority: 7 U.S.C. 7411-7425; 7 U.S.C. 7401.

2. Section 1214.5 is revised to read as follows:

§ 1214.5 Crop year.

Crop year means the period August 1 through July 31 or such other period approved by the Secretary.

3. Section 1214.8 is revised to read as follows:

§ 1214.8 Fiscal period.

Fiscal period means the period August 1 through July 31 or such other period as approved by the Secretary.

4. Subpart C - Rules and Regulations is added to read as follows:

Subpart C - Provisions Implementing the Christmas Tree Promotion, Research, and Information Order

§ 1214.520 Late payment and interest charges for past due assessments.

(1) A late payment charge shall be imposed on any producer or importer who fails to make timely remittance to the Board of the total assessments for which such producer or importer is liable. The late payment charge will be imposed on any assessments not received within 30 calendar days of the date they are due. This one-time late payment charge shall be \$250 and would be increased to \$500 after 90 days of delinquency.

(2) In addition to the late payment charge, 1.5 percent per month interest on the outstanding balance, including any late payment charge and accrued interest, will be added to any accounts for which payment has not been received by the Board within 30 calendar days after the date the assessments are due. Such interest will continue to accrue monthly until the outstanding balance is paid to the Board.

Dated: February 25, 2016.
Elanor Starmer,
Acting Administrator.

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